

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES A. LEWIS,

Plaintiff,

v.

ANGELA McLEAN and
JOSEPH CICHANOWICZ.

Defendants.

ORDER

14-cv-280-jdp
Appeal No. 19-1562

Judgment was entered in this case on January 9, 2019, after a jury returned a verdict in favor of defendants Angela McLean and Joseph Cichanowicz. I denied Lewis's motion to alter or amend the judgment, as well as his motion for reconsideration of that decision. Dkt. 165 and Dkt. 172. Now Lewis has filed a notice of appeal, Dkt. 176, and requests leave to proceed without prepayment of the appellate docketing fee, Dkt. 177. His request for leave to proceed *in forma pauperis* will be granted for reasons set forth briefly below.

Because Lewis is incarcerated, his case is governed by the Prisoner Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(b), which requires indigent inmates to pay by installment the entire filing fee for civil actions and appeals. Lewis has supplied an inmate trust fund account statement so that a determination may be made as to whether he is indigent and, if so, what amount must be assessed as an initial partial payment of the fee for his appeal. In making that determination, the court must also certify whether an appeal is "not taken in good faith" or that the party is "not otherwise entitled to proceed" as an indigent litigant for purposes of Fed. R. App. P. 24(a)(3). *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith.").

From the financial information that Lewis provides, the court finds that he lacks sufficient means to prepay the entire \$505 appellate docketing fee. Because it does not appear that Lewis has filed his appeal in bad faith or that pauper status is otherwise precluded by Fed. R. App. P. 24(a), the court will grant his motion for leave to proceed *in forma pauperis*.

Although Lewis has been found eligible to proceed *in forma pauperis*, the PLRA requires indigent inmates to submit an initial partial payment pursuant to the formula found in 28 U.S.C. § 1915(b)(1). Based on his inmate trust fund account statement, the court finds that Lewis is able to make an initial partial filing fee payment of \$8.84, which will be due no later than May 1, 2019. Lewis shall pay the remainder of the \$505 appellate docketing fee in monthly installments according to 28 U.S.C. § 1915(b)(2).

Lewis has also filed a motion for preparation of the trial transcripts at government expense. Under 28 U.S.C. § 753(f), a party proceeding *in forma pauperis* is entitled to a free transcript if the party files an appeal and the court determines that the appeal “is not frivolous (but presents a substantial question).” I am granting Lewis leave to proceed *in forma pauperis* on his appeal and conclude that the appeal is not taken in bad faith. Although I see no error in the court’s rulings or the jury verdict, I do not believe that the appeal is frivolous. Accordingly I will grant Lewis’s motion.

ORDER

IT IS ORDERED that:

1. Plaintiff James A. Lewis’s request for leave to proceed *in forma pauperis*, Dkt. 177, is GRANTED. The court certifies that Lewis’s notice of appeal is not taken in bad faith for purposes of Fed. R. App. P. 24(a)(3).
2. No later than May 1, 2019, Lewis shall submit a check or money order made payable to the Clerk of Court in the amount of \$8.84 as an initial partial

payment of the docketing fee for his appeal. If Lewis does not have the money to make the initial partial appeal payment from his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account.

3. If Lewis fails to make his initial partial fee payment as directed by May 1, 2019, the clerk's office will notify the court of appeals so that it may take whatever action it deems appropriate with respect to this appeal.
4. Lewis's motion for preparation of transcripts at the government's expense, Dkt. 179, is GRANTED. The court reporter is directed to prepare transcripts of the January 7 and January 8, 2019 trial and furnish copies to Lewis and to the government, with the fees to be paid by the United States, pursuant to 28 U.S.C. § 753(f).

Entered April 8, 2019.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge